IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 59/2007

DR. SAMAR VEER SINGH
Vs.
RAJASTHAN UNIVERSITY OF HEALTH SCIENCES & ORS.

DATE: 06.08.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Shobhit Tiwari for the petitioner.
Mr. R.A. Katta for the respondents.

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The petitioner passed MBBS Final Examinations in the year 1999 and thereafter passing out the Pre-PG Examination became eligible for admission to Master of Surgery course in the year 2003 and applied for the same and was given admission in R.N.T. Medical College, Udaipur.

The present writ petition has been filed by the petitioner on the ground that the respondents are not allowing the petitioner to appear in the examinations of Paper II, III and IV of M.S. (General Surgery) Course. The case of the petitioner is that vide Annexure-4 dated 29.12.2006, the Controller of Examinations, Rajasthan University of Helath Sciences, Jaipur has wrongly passed the order informing the

Principal, RNT Medical College, Udaipur that the petitioner has not been permitted to appear at his examinations because he is not completing his three year period of study on 03.01.2007 (including 30 days period of examination.)

Aggrieved and dissatisfied with the aforesaid impugned order dated 29.12.2006, by way of this writ petition the petitioner has challenged the action of the respondents and submits that as per Clause 13.2 of the Salient Features of Postgraduate Medical Education Regulations, 2000 (Medical Council of India) (for short 'the Regulations of 2000'), all the candidates joining the Post Graduate training programme shall work as full time residents during the period of training attending not less than 80% (Eight percent) of the training during each calender year, and given full time responsible assignments and participation in all facets of the educational process. Therefore, as per Clause 13.2 of the Regulations of 2000, the petitioner is required to complete 80% of the attendance in each calender year.

Learned counsel for the petitioner also submits that the petitioner has attended more than 80% classes, therefore, depriving him not to appear in the

examinations of Papers II, III and IV of M.S. (General Surgery) Course is not only contrary to the Regulations but also against the settled principle of law.

It appears that vide ex parte interim order dated 04.01.2007, the petitioner was provisionally allowed to appear in the examinations of Papers II, III and IV of M.S. (General Surgery) Course starting from 06.01.2007. It was further ordered that his result may not be declared without permission of the Court. Therefore, the petitioner moved application for declaration of the result of the petitioner, upon which this matter comes up for orders and the matter is heard finally as the parties agreed.

As observed herein above, the petitioner referred Clause 13.2 of the Regulations of 2000 and further submits that admission was given to the petitioner in M.S. Course on 03.12.2003 and since the petitioner is working in Armed Force, therefore, he was only able to join the course on 02.02.2004. It is also submitted that 83 days extension was allowed to the petitioner by the respondents and thus considering the extended period and the classes attended by the petitioner, his attendance comes to more than 80%.

Learned counsel for the petitioner further submits that the petitioner is entitled to get the benefit of 28 days in December, 2003 and 31 days in January, 2004 and after giving the benefit of the aforesaid days, the petitioner has completed his requisite attendance as per Clause 13.2 of the Regulations of 2000.

Learned counsel for the petitioner also referred additional affidavit filed by the petitioner stating therein that he has completed three years course as per the requirement of the respondents and as per the requirement of the guidelines of the Post Graduate Medical Education Regulation, 2000 and as per the Ordinance 278-E relating to M.D. and M.S. Examination.

He further submits that his period started from 04.12.2003 and completed on 03.12.2006 and thus, he has attended the classes for 1012 days out of 1095 days and percentage of attendance comes to 93%, whereas as per the requirement of Clause 13.2 of the Regulations of 2000, 80% attendance is only required. Thus, the impugned order/letter Annexure-4 dated 29.12.2006 is not only contrary to the facts but also contrary to Clause 13.2 of the Regulations of 2000 and

Ordinance 278-E.

Learned counsel for the respondents has filed reply on behalf of respondent Nos. 1 and 2 Rajasthan University as well as respondent No.3 Principal, RNT Medical College, Udaipur separately. He has categorically stated that the petitioner belongs to batch of 2003 of for MD/MS Course and joined the course on 04.12.2003. It is further stated that the candidates of the batch of 2003 joined three years Residency Training in the month of December, 2003. As per Ordinance 278-C-6 of the University of Rajasthan the candidate is eligible for First examination of M.D. or M.S. is required completion of three years residency training and the Second examination is required to be held after six months and most of the students of batch of 2003 will be completing 3 years residency training in December, 2007/January, 2008 but the petitioner has not completed three years training on or before examination on 01.06.2007.

In support of his submissions the learned counsel for the respondents also referred Ordinance 278-C(6) and 278-C(7) which is reproduced hereunder:-

> **Ordinance 278-C(6).** The examinations of D.M., M.Ch., M.D. M.S. and M.Sc. (Med.) will be held twice a year. The first examination for M.D.,

> M.S. and M.Sc. (Med.) will be held on completion of three years residency training and for D.M. and M.Ch. on completion of two years training. The second examination will be held after six months. Candidates shall not be permitted more than two-examinations in a year, with an interval of six months. In case of postponment of examinations, the students appearing at the postponed examination shall be governed by the same syllabus and scheme of examination as were applicable to the original examination.
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> (7). Every candidate presenting himself for any of these examinations shall submit to the Registrar, University of Rajasthan, through the Head of the Institution, a certificate of having completed his training under the guidance and to the satisfaction of a recognised guide/guides, the courses of study in the subject of the brach in which he presents himself for the examination and certificate of his having acquainted himself with the subject allied to his speciality and approved by the guide."

It is not disputed that Postgraduate residents are permitted non accumulative 20 days casual leave per Session and 72 non working days in total in a particular Session, but in any case the petitioner has to work for 291 days in one session in each year of the residency training.

Learned counsel appearing for the respondent University has drawn my attention towards Annexure-R-1/1 dated 14.12.2006 issued by the Office of the

Principal R.N.T. Medical College & Controller, wherein at No. 15 which relates to the petitioner, it has been observed has under:-

> 15. Dr. Samarveer Singh, MS (Gen. Surgery) Paper II to IV, 83 days:
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> NOTE: Dr. Samarveer Singh has joined and registered for MS (Gen. Surgery) course w.e.f. 4/12/03 for 3 years by the University of Rajasthan Jaipur under registration no. 2002/372. Accordingly his regular 3 years term completes on 3/12/06. During this period he has extension of total 83 days and with extension of 83 days his 3 years term completes on 24/2/07. As such even after considering relaxation period of 30 days he falls 22 days short to appear in the examination. A copy of application submitted by him is enclosed alongwith his examination form."

He further referred letter Annexure-R-1/2 dated 14.12.2006 written by the Principal & Controller, R.N.T. Medical College to the Vice Chancellor, Rajasthan University of Health Sciences, Jaipur informing that since petitioner's total period of leave without stipend was for 83 days, hence his term of 3 years finished on 24/2/07 instead of 3/12/06. One month (30 days) relaxation is given by University as per past practice considering it to examination period and the examinations are starting from 3 Jan. 2007 and he will

given benefit of training from 4/12/06 to 3/1/07 (31 days). Hence out of extension of 83 days, sixty one days (61) have been regularized. Even after regularizing 61 days, the petitioner falls 22 days short in training which has not been allowed.

He further referred the judgment rendered by the Hon'ble Supreme Court in the case of **Maharshi Dayanand University Vs. Dr. Anto Joseph And Others, (1998) 6 SCC 215,** wherein it has been held by the Hon'ble Supreme Court that where the Medical Council of India and the University prescribed a minimum period of three years' training for eligibility for MD Examination and the respondent-candidate was give leave for 42 days subject to the condition that he would have to repeat the training before appearing in the final examination and the University, though empowered to condone 30 day's absence did not exercise that power, held, the said candidate, on account of 42 days' shortage in the required training period, could appear only at the next examination and not at the 1996 examination.

The same judgment has been relied by the counsel for the petitioner also and he referred the observations made by the Hon'ble Supreme Court which

were under consideration before the Hon'ble Supreme Court.

Mr. Katta appearing for the respondents also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Director, Medical Education, Lucknow and Others Vs. Dr. Swapnil Chauhan, (2000) 10 SCC 587,** wherein it has been held by the Hon'ble Supreme Court that according to Medical Council of India, minimum period of training for award of MD/MS courses from year 1993 onwards is three calender years- Respondent could not put in even one year course of study in MS course due to stay order granted by Supreme Court, held, respondent ineligible for admission in MS course- No credit can be given to the respondent for the period of study for diploma for obtaining MD/MS.

Mr. Katta also referred reply submitted on behalf of the respondent No.2 the Principal, RNT Medical College, Udaipur and drawn my attention towards undertaking given by the petitioner. In undertaking Annexure-R-3/1 dated 16.03.2004, the petitioner undertakes that in future he will not remain absent from duty and will avail leave only if due with prior permission from his head of Department failing which he will be responsible for cancellation of his admission

without any further notice to him.

He also referred application Annexure-R-3/2 dated 12.12.2006, written by the petitioner to the Principal & Controller, RNT Medical College & Attached Group of Hospitals, Udaipur, wherein in para No. 4 the petitioner has categorically stated that I am falling 22 days short in the eligibility for appearing in P.G. Examination in January, 2007 and requested to kindly consider his case and allow him to appear in the examination of M.S. General Surgery held in January, 2007.

It is not disputed that vide interim order dated 04.01.2007 granted by this Court, the petitioner was provisionally allowed to appear in the Papers II, III and IV of M.S. (General Surgery) Course started from 06.01.2007. It is also not disputed that in the extended period the petitioner also appeared in the examination held in May, 2007.

I have gone through the provisions of Clause 13.2 of the Regulations of 2000 and the judgments referred before me as well as the averments made in the writ petition as also the reply.

It is not disputed that the petitioner falls 22 days short and considering this fact the petitioner

already appeared in the examination held in May, 2007.

Vide order dated 27.07.2007, learned counsel for the respondents was directed to bring the result of the petitioner under sealed cover for perusal of this Court, which has been produced and the same has been perused.

Having carefully examining the case of the petitioner, I am not impressed with the submissions made on behalf of the petitioner that he has completed 80% attendance in each calender year as is evident from his application dated 12.12.2006 that his attendance falls short by 22 days which is after giving relaxation. Even considering this aspect, the petitioner was provisionally allowed to appear in the examination and he also appeared in the examinations held in May, 2007.

In the aforesaid facts and circumstances of the case and in view of the settled proposition of the Hon'ble Supreme Court even one day cannot be extended looking to the nature of the training. Therefore, I do not find it a fit case so far declaration of the result of the examination held in January, 2007 is concerned, wherein the petitioner was provisionally allowed to appear under the directions of this Court, but the

University is directed to declare the result of the examinations held in May, 2007 and as regards declaring the result of the petitioner held in January, 2007, I find no merit in the writ petition.

In view of the observations made herein above, the writ petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

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